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Congress of the United States

Washington, DC 20515

February 11, 1999

MM 91-221

The Honorable William E. Kennard
Chairman
Federal Communications Commission
445 12th Street, S.W.
Room 8-B115
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Chairman Kennard:

We understand the Commission will be holding a hearing regarding various local television ownership rules on February 12, 1999. The hearing will apparently focus on the local television duopoly rule, local marketing agreements (LMAs) and the one-to-a-market rule. While we always applaud the Commission's desire to expand the record, we would observe that the FCC has collected evidence on some of these issues for nearly a decade. Moreover, during the intervening years Congress stated its position on these issues in the 1996 Telecommunications Act. We have also sent several letters to you and your predecessor. To the extent you wish to supplement the existing voluminous record, we thought it appropriate to express our views one more time.

There is no question that all local marketing agreements (LMAs) have been grandfathered, *permanently*. Support for this can be found in Section 202(g) of the 1996 Telecommunications Act as well as the report language explaining this provision. Because of FCC recalcitrance in interpreting this provision, Congress restated its position in the 1997 Budget Reconciliation Act:

"Specifically, the conferees expect that the Commission will provide additional relief (e.g. VHF/UHF combinations) that it finds to be in the public interest, and will implement the permanent grandfather requirement for local marketing agreements as provided in the Telecommunications Act of 1996."

The concept of "grandfathering" is fairly straightforward. These arrangements should continue as long as the parties agree. Local broadcasters have invested hundreds of millions of dollars in these arrangements. They have served the public interest. It would be unfair and inconsistent with the law to now impose *post hoc* limitations. The agreements should be renewable and freely transferable. Any restrictions, such as imposing a term of years, limiting transferability, or limiting an LMA to its initial contract term are flatly inconsistent with the concept of "grandfathering."

As a general matter, diversity is not enhanced if, because of local market conditions, stations cannot create economically efficient entities to compete with multichannel competitors.

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"Independent" ownership is certainly an important consideration, but it should not be the controlling factor when examining local broadcast ownership. The public interest is not served if a station, *albeit* independently owned, lacks the economic resources to provide top quality news, entertainment and sports programming. Nothing is gained by having "independent owners" if they cannot compete in the marketplace. The ultimate focus should be on providing the best possible free, over-the-air-broadcast service to all Americans, rich and poor, urban and rural.

Similar policies support the grandfathering of all existing one-to-a market radio and television waivers. The 1996 Telecommunications Act relaxed the radio duopoly rule and expanded the one-to-a-market waiver policy to the top fifty television markets. Not surprisingly, broadcasters adjusted their business plans to take advantage of these changes in the law. In fact, the FCC has granted numerous waivers of its one-to-a-market rule based on showings that joint ownership of a television station and the maximum number of radio stations allowed by Congress was in the public interest. There is no evidence that the combinations allowed by these waivers have caused any harm to the public interest. Therefore, a *post hoc* divestiture rule cannot be justified. Not only would such a requirement create tremendous uncertainty for future broadcast investment, but it would be patently inconsistent with historical FCC policy.

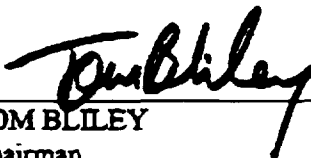
We strongly urge the Commission to approach local ownership issues with an eye on the future. The Commission should not wait until free, over-the-air broadcasting is overwhelmed by multichannel competition before taking action. It should consider the expense of shifting to digital television, as well as future opportunities to improve service to the public through local market combinations. For example, future television combinations may be appropriate in cases where one of the stations involved is a UHF facility. Such opportunities may exist not only in large markets, but in small markets where it has been difficult to support a full complement of independently owned stations. Likewise, new radio/television combinations may benefit the public.


The point here is that the Commission should provide *significant, meaningful, prospective* relief to local radio and television broadcasters. Such relief must be consistent with the public interest, which, by necessity, requires an evaluation of marketplace imperatives. As you know, some of the undersigned have gone further in calling for a complete repeal of existing rules.


We strongly urge you to reflect carefully on your duty to implement Congressional directives fully and faithfully. As we pointed out to you in prior correspondence, the Commission appears to have strayed from this path. We trust you will pay close attention to these concerns as you proceed with your rulemaking.

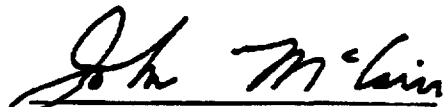
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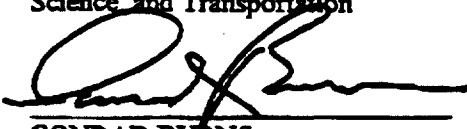
Sincerely,


TOM BLILEY
Chairman
House Committee on Commerce


W.J. "BILLY" TAUZIN
Chairman
House Subcommittee on Telecommunications,
Trade, and Consumer Protection


JOHN D. DINGELL
Ranking Member
House Committee on Commerce


JOHN MCCAIN
Chairman
Senate Committee on Commerce,
Science and Transportation


CONRAD BURNS
Chairman
Senate Subcommittee on
Communications

cc: Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani